(6:152 + 485 - 500)

(9)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

M.A. NO. 506 OF 2006

APPELLANT: E. Ramendra Rao, son of Late E. Nageshwar Rao, aged about years, resident of Link Road, Bilaspur (C.G.)

Vs.

RESPONDENTS: 1. Bajrang Lohia, aged about 59 years, son of Shri R.K.Lohia, resident of Sadar Bazar, Bilaspur.

2. Nathmal Sharma, named Sole Arbitrator, Evening Times, Nehru Chowk, Bilaspur.

P.R. No. 9/12/06
Presented by Shri Manish Kumar Sonkar
9/12/06

Case valued Rs-6,10000/-
Court Fee affixed Rs-500/-

APPEAL UNDER SECTION 37 (2) OF THE ARBITRATION AND CONCILIATION ACT, 1996

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH **HON'BLE SHRI V.K. SHRIVASTAVA &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

MISC. APPEAL NO. 506 OF 2006

Appellant : **E. Ramendra Rao**

Versus

Respondents : **Bajrang Lohia and another**

Present
Shri B.P. Sharma, learned counsel for the appellant.
Shri M.D. Sharma, learned counsel for respondent No. 1.
Shri R.N. Jha, learned counsel for respondent No. 2.

O R D E R
(Passed on 04.01.2007)

Heard.

2. Learned counsel for the appellant relying on judgment rendered by Hon'ble the Apex Court in the matter of **M/s. Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others** reported in **1998 S.C. 128** vehemently contended that nomenclature under which this appeal has been filed, is not relevant but the exercise of power by respondent No. 2 without having jurisdiction is material and accordingly prayed to consider his appeal, on the other hand, maintainability of this appeal has been challenged by learned counsel for the respondents.

3. The impugned order passed by respondent No. 2, the sole arbitrator is reproduced hereinunder:

"12.1.06

दोनों पक्ष उपस्थित । वादी श्री बजरंग लोहिया द्वारा पूर्व में प्रस्तुत वाद दि. १२.१०.२००३ को वापस लेने आवेदन पत्र २.०१.२००६ को दिया गया । प्रतिवादी श्री ई. रामेंद्र रा को इसका प्रति दी गई । उन्होंने जवाब दिया । इसमें कहा कि किसी

भी समय वाद वापस लिया जा सकता है, लेकिन पुन: प्रस्तुत करने हेतु आपत्ति की ।

एम. ए. नं. क्र १०९०/२००३ आदेशित दि. १८.११.२००५ में माननीय उच्च न्यायालय बिलासपुर के आदेश में यह कहा गया है कि वाद प्रस्तुत करने के पहले आर्बिट्रेशन एक्ट की धारा २१ के तहत लिखित सूचना नहीं दी गई । इसलिए आर्बिट्रेशन प्रकिया प्रारम्भ नहीं हुई । ऐसी स्थिति में उक्त तकनीकी कारण से वाद वापस लिया जा सकता है। अत: ५००/- रु. के कास्ट पर नए सिरे से वाद प्रस्तुत करने की अनुमति देते हुए वाद वापस किया जाता है ।

प्रकरण समाप्त किया जाता है ।"

Section 37(2) of the Arbitration and Conciliation Act, 1996 (for brevity 'Act of 1996') reads as below:

"37. Appealable orders.- (1) xxxx xxxx xxxx xxxx .

(2) Appeal shall also lie to a court from an order of the arbitral tribunal-

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

4. It is manifest that the order passed by the sole arbitrator does not fall within the ambit of Section 37(2) of the Act of 1996, therefore, so far as appeal is concerned, the appeal against the impugned order is not maintainable.

5. So far as jurisdiction of the arbitrator is concerned, admittedly Nathmal Sharma (respondent No. 2) is a sole arbitrator, therefore, at appropriate stage if his jurisdiction is challenged he himself is

empowered to decide it. If the order impugned passed by respondent No. 2 is null and void, appellant shall invoke jurisdiction of appropriate forum for his redressal in accordance with law.

6. In the result, the instant appeal is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

Khan